

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIJEANNE LIEDERBACH,
Plaintiff,
v.
NYU LANGONE HOSPITALS, GAIL
CHORNEY AND JOSE LABARCA III,
Defendants.

24-CV-00742 (JAV)

ORDER

JEANNETTE A. VARGAS, United States District Judge:

The Court is in receipt of the parties' joint status letter. ECF No. 59. With respect to the forensic search of the witness's cell phone, the Court will permit the parties to submit letter briefs on this issue, including any proposed cost-shifting. Plaintiff shall submit its letter brief with respect to its motion to compel by **July 8, 2025**. Defendants shall submit its opposition letter by **July 11, 2025**. No reply will be permitted.

The parties had previously represented to the Court that the parties had reached agreement with respect to Plaintiff's IME. ECF No. 55. Plaintiff's current position is therefore troubling. Moreover, it seems evident that Plaintiff can demonstrate good cause for a Rule 35 mental health examination of Plaintiff, in light of the claim for extraordinary emotional distress damages. *Rance v. Jefferson Vill. Condo. No. 5*, No. 18 CIV. 6923 (JCM), 2019 WL 12373336, at *2 (S.D.N.Y. Sept. 23, 2019). Yet Rule 35 permits the Court to issue an order compelling such an examination only "on motion for good cause and on notice to all parties and the person to be examined." Fed. R. Civ. P. 35(a)(2).

Defendant shall submit its letter motion seeking to compel Plaintiff's IME by **July 8, 2025**. Plaintiff shall submit its response letter by **July 11, 2025**. No reply shall be permitted.

The presumption in federal court is that counsel will not be present for such an examination absent a showing of special circumstances. *See, e.g., Picinich v. Cnty. of Nassau*, No. 18-CV-2018 (GRB) (JMW), 2022 WL 3704217, at *2 (E.D.N.Y. Aug. 26, 2022) (“The presence of attorneys at IMEs, especially psychiatric ones, are often denied in federal courts because of the special nature of such an examination which relies upon unimpeded one-on-one communication between doctor and patient.”). Accordingly, Plaintiff’s opposition papers must address whether special factors exist that would justify counsel’s presence at any IME.

The conference currently scheduled for August 4, 2025, is adjourned sine dia.

Dated: July 2, 2025

New York, New York



JEANNETTE A. VARGAS
United States District Judge